

1-1 By: Harris S.B. No. 786  
1-2 (In the Senate - Filed February 18, 2011; March 1, 2011,  
1-3 read first time and referred to Committee on Jurisprudence;  
1-4 March 23, 2011, reported favorably by the following vote: Yeas 6,  
1-5 Nays 0; March 23, 2011, sent to printer.)

1-6 A BILL TO BE ENTITLED  
1-7 AN ACT

1-8 relating to procedures for establishment, modification, and  
1-9 enforcement of child support obligations.

1-10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-11 SECTION 1. Subsection (c), Section 154.187, Family Code, is  
1-12 amended to read as follows:

1-13 (c) An employer who has received an order or notice under  
1-14 this subchapter shall provide to the sender, by first class mail not  
1-15 later than the 40th [~~30th~~] day after the date the employer receives  
1-16 the order or notice, a statement that the child:

1-17 (1) has been enrolled in the employer's health  
1-18 insurance plan or is already enrolled in another health insurance  
1-19 plan in accordance with a previous child support or medical support  
1-20 order to which the employee is subject; or

1-21 (2) cannot be enrolled or cannot be enrolled  
1-22 permanently in the employer's health insurance plan and provide the  
1-23 reason why coverage or permanent coverage cannot be provided.

1-24 SECTION 2. Subsection (b), Section 154.303, Family Code, is  
1-25 amended to read as follows:

1-26 (b) The parent, the child, if the child is 18 years of age or  
1-27 older, or other person may not transfer or assign the cause of  
1-28 action to any person, including a governmental or private entity or  
1-29 agency, except for an assignment made to the Title IV-D agency under  
1-30 Section 231.104 or in the provision of child support enforcement  
1-31 services under Section 159.307.

1-32 SECTION 3. Section 156.401, Family Code, is amended by  
1-33 amending Subsection (a) and adding Subsection (a-2) to read as  
1-34 follows:

1-35 (a) Except as provided by Subsection (a-1), (a-2), or (b),  
1-36 the court may modify an order that provides for the support of a  
1-37 child, including an order for health care coverage under Section  
1-38 154.182, if:

1-39 (1) the circumstances of the child or a person  
1-40 affected by the order have materially and substantially changed  
1-41 since the earlier of:

1-42 (A) the date of the order's rendition; or

1-43 (B) the date of the signing of a mediated or  
1-44 collaborative law settlement agreement on which the order is based;  
1-45 or

1-46 (2) it has been three years since the order was  
1-47 rendered or last modified and the monthly amount of the child  
1-48 support award under the order differs by either 20 percent or \$100  
1-49 from the amount that would be awarded in accordance with the child  
1-50 support guidelines.

1-51 (a-2) A court or administrative order for child support in a  
1-52 Title IV-D case may be modified as provided under Section  
1-53 233.013(c) to provide for medical support of a child.

1-54 SECTION 4. Section 157.162, Family Code, is amended by  
1-55 amending Subsection (c) and adding Subsection (c-1) to read as  
1-56 follows:

1-57 (c) The movant may attach to the motion a [A] copy of a [the]  
1-58 payment record maintained by the state disbursement unit under  
1-59 Chapter 234 or a local registry that is current as of the date the  
1-60 motion is filed. The movant may subsequently update that payment  
1-61 record at the hearing. If a payment record was attached to the  
1-62 motion as authorized by this subsection, the payment record, as  
1-63 updated if applicable, [attached to the motion is evidence of the  
1-64 facts asserted in the payment record and] is admissible to prove:

- 2-1                   (1) the dates and in what amounts payments were made;  
 2-2                   (2) the amount of any accrued interest;  
 2-3                   (3) the cumulative arrearage over time; and  
 2-4                   (4) the cumulative arrearage as of the final date of  
 2-5 the record.

2-6                   (c-1) A [~~show whether payments were made.~~ The] respondent  
 2-7 may offer [~~controverting~~] evidence controverting the contents of a  
 2-8 payment record under Subsection (c).

2-9                   SECTION 5. Subdivisions (1) and (4), Section 157.311,  
 2-10 Family Code, are amended to read as follows:

2-11                   (1) "Account" means:

2-12                   (A) any type of a demand deposit account,  
 2-13 checking or negotiable withdrawal order account, savings account,  
 2-14 time deposit account, [~~money market~~] mutual fund account,  
 2-15 certificate of deposit, or any other instrument of deposit in which  
 2-16 an individual has a beneficial ownership either in its entirety or  
 2-17 on a shared or multiple party basis, including any accrued interest  
 2-18 and dividends; and

2-19                   (B) an [~~a life~~] insurance policy, including a  
 2-20 life insurance policy or annuity contract, in which an individual  
 2-21 has a beneficial ownership or [~~liability insurance~~] against which  
 2-22 an individual may file [~~has filed~~] a claim or counterclaim.

2-23                   (4) "Financial institution" has the meaning assigned  
 2-24 by 42 U.S.C. Section 669a(d)(1) and includes a depository  
 2-25 institution, depository institution holding company as defined by  
 2-26 12 U.S.C. Section 1813(w), credit union, benefit association,  
 2-27 [~~liability or life~~] insurance company, [~~money market~~] mutual fund,  
 2-28 and any similar entity authorized to do business in this state.

2-29                   SECTION 6. Subsection (a), Section 157.317, Family Code, is  
 2-30 amended to read as follows:

2-31                   (a) A child support lien attaches to all real and personal  
 2-32 property not exempt under the Texas Constitution or other law,  
 2-33 including:

2-34                   (1) an account in a financial institution;

2-35                   (2) a retirement plan, including an individual  
 2-36 retirement account; [~~and~~]

2-37                   (3) the proceeds of an [~~a life~~] insurance policy,  
 2-38 including the proceeds from a life insurance policy or annuity  
 2-39 contract and the proceeds from the sale or assignment of life  
 2-40 insurance or annuity benefits, a claim for compensation [~~negligence~~  
 2-41 or personal injury], or a [~~an insurance~~] settlement or award for the  
 2-42 claim for compensation, due to or owned by the obligor; and

2-43                   (4) property seized and subject to forfeiture under  
 2-44 Chapter 59, Code of Criminal Procedure.

2-45                   SECTION 7. Subchapter G, Chapter 157, Family Code, is  
 2-46 amended by adding Section 157.3271 to read as follows:

2-47                   Sec. 157.3271. LEVY ON FINANCIAL INSTITUTION ACCOUNT OF  
 2-48 DECEASED OBLIGOR. (a) Subject to Subsection (b), the Title IV-D  
 2-49 agency may, not earlier than the 90th day after the date of death of  
 2-50 an obligor in a Title IV-D case, deliver a notice of levy to a  
 2-51 financial institution in which the obligor was the sole owner of an  
 2-52 account, regardless of whether the Title IV-D agency has issued a  
 2-53 child support lien notice regarding the account.

2-54                   (b) The Title IV-D agency may not deliver a notice of levy  
 2-55 under this section if probate proceedings relating to the obligor's  
 2-56 estate have commenced.

2-57                   (c) The notice of levy must:

2-58                   (1) identify the amount of child support arrearages  
 2-59 determined by the Title IV-D agency to be owing and unpaid by the  
 2-60 obligor on the date of the obligor's death; and

2-61                   (2) direct the financial institution to pay to the  
 2-62 Title IV-D agency, not earlier than the 45th day or later than the  
 2-63 60th day after the date of delivery of the notice, an amount from  
 2-64 the assets of the obligor or from funds due to the obligor that are  
 2-65 held or controlled by the institution, not to exceed the amount of  
 2-66 the child support arrearages identified in the notice.

2-67                   (d) Not later than the 35th day after the date of delivery of  
 2-68 the notice, the financial institution must notify any other person  
 2-69 asserting a claim against the account that:

3-1 (1) the account has been levied on for child support  
 3-2 arrearages in the amount shown on the notice of levy; and

3-3 (2) the person may contest the levy by filing suit and  
 3-4 requesting a court hearing in the same manner that a person may  
 3-5 challenge a child support lien under Section 157.323.

3-6 (e) A person who contests a levy under this section, as  
 3-7 authorized by Subsection (d)(2), may bring the suit in:

3-8 (1) the district court of the county in which the  
 3-9 property is located or in which the obligor resided; or

3-10 (2) the court of continuing jurisdiction.

3-11 (f) The notice of levy may be delivered to a financial  
 3-12 institution as provided by Section 59.008, Finance Code, if the  
 3-13 institution is subject to that law or may be delivered to the  
 3-14 registered agent, the institution's main business office in this  
 3-15 state, or another address provided by the institution under Section  
 3-16 231.307.

3-17 (g) A financial institution may deduct its fees and costs,  
 3-18 including any costs for complying with this section, from the  
 3-19 deceased obligor's assets before paying the appropriate amount to  
 3-20 the Title IV-D agency.

3-21 SECTION 8. Subsections (b) and (b-1), Section 158.203,  
 3-22 Family Code, are amended to read as follows:

3-23 (b) An employer with 50 [~~250~~] or more employees shall remit  
 3-24 a payment required under this section by electronic funds transfer  
 3-25 or electronic data interchange not later than the second business  
 3-26 day after the pay date.

3-27 (b-1) An employer with fewer than 50 [~~250~~] employees may  
 3-28 remit a payment required under this section by electronic funds  
 3-29 transfer or electronic data interchange. A payment remitted by the  
 3-30 employer electronically must be remitted not later than the date  
 3-31 specified by Subsection (b).

3-32 SECTION 9. The heading to Section 158.503, Family Code, is  
 3-33 amended to read as follows:

3-34 Sec. 158.503. DELIVERY OF ADMINISTRATIVE WRIT TO EMPLOYER;  
 3-35 FILING WITH COURT OR MAINTAINING RECORD.

3-36 SECTION 10. Section 158.503, Family Code, is amended by  
 3-37 amending Subsections (a) and (b) and adding Subsection (b-1) to  
 3-38 read as follows:

3-39 (a) An administrative writ of withholding issued under this  
 3-40 subchapter may be delivered to an [~~obligor, obligee, and~~] employer  
 3-41 by mail or by electronic transmission.

3-42 (b) The Title IV-D agency shall:

3-43 (1) ~~not~~ [~~Not~~] later than the third business day after  
 3-44 the date of delivery of the administrative writ of withholding to an  
 3-45 employer, [~~the Title IV-D agency shall~~] file a copy of the writ,  
 3-46 together with a signed certificate of service, in the court of  
 3-47 continuing jurisdiction; or

3-48 (2) maintain a record of the writ until all support  
 3-49 obligations of the obligor have been satisfied or income  
 3-50 withholding has been terminated as provided by this chapter.

3-51 (b-1) The certificate of service required under Subsection  
 3-52 (b)(1) may be signed electronically. [~~This subsection does not~~  
 3-53 apply to the enforcement under Section 158.501(c) of a support  
 3-54 order rendered by a tribunal of another state.]

3-55 SECTION 11. Section 231.015, Family Code, is amended to  
 3-56 read as follows:

3-57 Sec. 231.015. INSURANCE REPORTING PROGRAM. (a) In  
 3-58 consultation with the Texas Department of Insurance and  
 3-59 representatives of the insurance industry in this state, including  
 3-60 insurance trade associations, the Title IV-D agency by rule shall  
 3-61 operate a program [~~to improve the enforcement of child support,~~  
 3-62 ~~including the use of child support liens under Chapter 157. The~~  
 3-63 ~~program shall provide for procedures, including data matches,~~  
 3-64 under which insurers [~~insurance companies~~] shall cooperate with the  
 3-65 Title IV-D agency in identifying obligors who owe child support  
 3-66 arrearages and [~~or who~~] are subject to liens for child support  
 3-67 arrearages to intercept certain [~~liability~~] insurance settlements  
 3-68 or awards for claims in satisfaction of the arrearage amounts.

3-69 (b) An insurer [~~insurance company~~] that provides

4-1 information or responds to a notice of child support lien or levy  
 4-2 under Subchapter G, Chapter 157, or acts in good faith to comply  
 4-3 with procedures established by the Title IV-D agency under this  
 4-4 section is not liable for those acts under any law to any person.

4-5 SECTION 12. Section 231.307, Family Code, is amended by  
 4-6 amending Subsection (d) and adding Subsection (g) to read as  
 4-7 follows:

4-8 (d) A financial institution providing information or  
 4-9 responding to a notice of child support lien or levy provided under  
 4-10 Subchapter G, Chapter 157, or otherwise acting in good faith to  
 4-11 comply with the Title IV-D agency's procedures under this section  
 4-12 may not be liable under any federal or state law for any damages  
 4-13 that arise from those acts.

4-14 (g) This section does not apply to an insurer subject to the  
 4-15 reporting requirements under Section 231.015.

4-16 SECTION 13. The heading to Section 232.0135, Family Code,  
 4-17 is amended to read as follows:

4-18 Sec. 232.0135. DENIAL OF LICENSE ISSUANCE OR RENEWAL.

4-19 SECTION 14. Subsections (a) through (d), Section 232.0135,  
 4-20 Family Code, are amended to read as follows:

4-21 (a) A child support agency, as defined by Section 101.004,  
 4-22 may provide notice to a licensing authority concerning an obligor  
 4-23 who has failed to pay child support for six months or more that  
 4-24 requests the authority to refuse to accept an application for  
 4-25 issuance of a license to the obligor or renewal of an existing [the]  
 4-26 license of the obligor.

4-27 (b) A licensing authority that receives the information  
 4-28 described by Subsection (a) shall refuse to accept an application  
 4-29 for issuance of a license to the obligor or renewal of an existing  
 4-30 [the] license of the obligor until the authority is notified by the  
 4-31 child support agency that the obligor has:

4-32 (1) paid all child support arrearages;

4-33 (2) established with the agency a satisfactory  
 4-34 repayment schedule or is in compliance with a court order for  
 4-35 payment of the arrearages;

4-36 (3) been granted an exemption from this subsection as  
 4-37 part of a court-supervised plan to improve the obligor's earnings  
 4-38 and child support payments; or

4-39 (4) successfully contested the denial of issuance or  
 4-40 renewal of license under Subsection (d).

4-41 (c) On providing a licensing authority with the notice  
 4-42 described by Subsection (a), the child support agency shall send a  
 4-43 copy to the obligor by first class mail and inform the obligor of  
 4-44 the steps the obligor must take to permit the authority to accept  
 4-45 the obligor's application for license issuance or renewal.

4-46 (d) An obligor receiving notice under Subsection (c) may  
 4-47 request a review by the child support agency to resolve any issue in  
 4-48 dispute regarding the identity of the obligor or the existence or  
 4-49 amount of child support arrearages. The agency shall promptly  
 4-50 provide an opportunity for a review, either by telephone or in  
 4-51 person, as appropriate to the circumstances. After the review, if  
 4-52 appropriate, the agency may notify the licensing authority that it  
 4-53 may accept the obligor's application for issuance or renewal of  
 4-54 license. If the agency and the obligor fail to resolve any issue in  
 4-55 dispute, the obligor, not later than the 30th day after the date of  
 4-56 receiving notice of the agency's determination from the review, may  
 4-57 file a motion with the court to direct the agency to withdraw the  
 4-58 notice under Subsection (a) and request a hearing on the motion.  
 4-59 The obligor's application for license issuance or renewal may not  
 4-60 be accepted by the licensing authority until the court rules on the  
 4-61 motion. If, after a review by the agency or a hearing by the court,  
 4-62 the agency withdraws the notice under Subsection (a), the agency  
 4-63 shall reimburse the obligor the amount of any fee charged the  
 4-64 obligor under Section 232.014.

4-65 SECTION 15. Subsection (a), Section 232.014, Family Code,  
 4-66 is amended to read as follows:

4-67 (a) A licensing authority may charge a fee to an individual  
 4-68 who is the subject of an order suspending license or of an action of  
 4-69 a child support agency under Section 232.0135 to deny issuance or

5-1 renewal of license in an amount sufficient to recover the  
5-2 administrative costs incurred by the authority under this chapter.

5-3 SECTION 16. Section 233.012, Family Code, is amended to  
5-4 read as follows:

5-5 Sec. 233.012. INFORMATION REQUIRED TO BE PROVIDED AT  
5-6 NEGOTIATION CONFERENCE. At the beginning of the negotiation  
5-7 conference, the child support review officer shall review with the  
5-8 parties participating in the conference information provided in the  
5-9 notice of child support review and inform the parties that:

5-10 (1) the purpose of the negotiation conference is to  
5-11 provide an opportunity to reach an agreement on a child support  
5-12 order;

5-13 (2) if the parties reach an agreement, the review  
5-14 officer will prepare an agreed review order to be effective  
5-15 immediately on being confirmed by the court, as provided by Section  
5-16 233.024;

5-17 (3) a party does not have to sign a review order  
5-18 prepared by the child support review officer but that the Title IV-D  
5-19 agency may file a review order without the agreement of the parties;

5-20 (4) the parties may sign a waiver of the right to  
5-21 service of process;

5-22 (5) a party may file a request for a court hearing on a  
5-23 nonagreed order not later than [at any time before] the 20th day  
5-24 after the date a copy of the petition for confirmation of the order  
5-25 is delivered to the party [filed]; and

5-26 (6) a party may file a motion for a new trial not later  
5-27 than [at any time before] the 30th day after an order is confirmed  
5-28 by the court.

5-29 SECTION 17. Section 233.013, Family Code, is amended by  
5-30 adding Subsection (c) to read as follows:

5-31 (c) Notwithstanding Subsection (b), the Title IV-D agency  
5-32 may, at any time and without a showing of material and substantial  
5-33 change in the circumstances of the parties, file a child support  
5-34 review order that has the effect of modifying an existing order for  
5-35 child support to provide medical support for a child if the existing  
5-36 order does not provide health care coverage for the child as  
5-37 required under Section 154.182.

5-38 SECTION 18. Section 1108.101, Insurance Code, is amended to  
5-39 read as follows:

5-40 Sec. 1108.101. ASSIGNMENT GENERALLY. (a) This chapter  
5-41 does not prevent an insured, owner, or annuitant from assigning, in  
5-42 accordance with the terms of the policy or contract:

5-43 (1) any benefits to be provided under an insurance  
5-44 policy or annuity contract to which this chapter applies; or

5-45 (2) any other rights under the policy or contract.

5-46 (b) A benefit or right described by Subsection (a) assigned  
5-47 by an insured, owner, or annuitant after a child support lien notice  
5-48 has been filed against the insured, owner, or annuitant by the Title  
5-49 IV-D agency continues to be subject to the child support lien after  
5-50 the date of assignment. The lien continues to secure payment of all  
5-51 child support arrearages owed by the insured, owner, or annuitant  
5-52 under the underlying child support order, including arrearages that  
5-53 accrue after the date of assignment.

5-54 SECTION 19. Section 411.1271, Government Code, is amended  
5-55 by adding Subsection (b-1) and amending Subsection (c) to read as  
5-56 follows:

5-57 (b-1) The office of the attorney general is entitled to  
5-58 obtain from the Department of Public Safety, the Federal Bureau of  
5-59 Investigation Criminal Justice Information Services Division, or  
5-60 another law enforcement agency criminal history record information  
5-61 maintained by the department or agency that relates to a person who  
5-62 owes child support in a Title IV-D case, as defined by Section  
5-63 101.034, Family Code, for the purposes of locating that person and  
5-64 establishing, modifying, or enforcing a child support obligation  
5-65 against that person.

5-66 (c) Criminal history record information obtained by the  
5-67 office of the attorney general under this section [~~Subsection (a)~~  
5-68 ~~or (b)~~] may not be released or disclosed to any person except on  
5-69 court order or with the consent of the person who is the subject of

6-1 the criminal history record information.

6-2 SECTION 20. Subsection (a), Section 34.04, Tax Code, is  
6-3 amended to read as follows:

6-4 (a) A person, including a taxing unit and the Title IV-D  
6-5 agency, may file a petition in the court that ordered the seizure or  
6-6 sale setting forth a claim to the excess proceeds. The petition  
6-7 must be filed before the second anniversary of the date of the sale  
6-8 of the property. The petition is not required to be filed as an  
6-9 original suit separate from the underlying suit for seizure of the  
6-10 property or foreclosure of a tax lien on the property but may be  
6-11 filed under the cause number of the underlying suit.

6-12 SECTION 21. Subsection (a), Article 59.06, Code of Criminal  
6-13 Procedure, is amended to read as follows:

6-14 (a) Except as provided by Subsection (k), all forfeited  
6-15 property shall be administered by the attorney representing the  
6-16 state, acting as the agent of the state, in accordance with accepted  
6-17 accounting practices and with the provisions of any local agreement  
6-18 entered into between the attorney representing the state and law  
6-19 enforcement agencies. If a local agreement has not been executed,  
6-20 the property shall be sold on the 75th day after the date of the  
6-21 final judgment of forfeiture at public auction under the direction  
6-22 of the county sheriff, after notice of public auction as provided by  
6-23 law for other sheriff's sales. The proceeds of the sale shall be  
6-24 distributed as follows:

6-25 (1) to any interest holder to the extent of the  
6-26 interest holder's nonforfeitable interest; ~~and~~

6-27 (2) after any distributions under Subdivision (1), if  
6-28 the Title IV-D agency has filed a child support lien in the  
6-29 forfeiture proceeding, to the Title IV-D agency in an amount not to  
6-30 exceed the amount of child support arrearages identified in the  
6-31 lien; and

6-32 (3) the balance, if any, after the deduction of court  
6-33 costs to which a district court clerk is entitled under Article  
6-34 59.05(f) and, after that deduction, the deduction of storage and  
6-35 disposal costs, to be deposited not later than the 30th day after  
6-36 the date of the sale in the state treasury to the credit of the  
6-37 general revenue fund.

6-38 SECTION 22. Subsection (c), Section 233.017, Family Code,  
6-39 is repealed.

6-40 SECTION 23. Subsection (c), Section 154.187, Family Code,  
6-41 as amended by this Act, applies to an order or notice received by an  
6-42 employer on or after the effective date of this Act. An order or  
6-43 notice received by an employer before the effective date of this Act  
6-44 is governed by the law in effect on the date the order or notice was  
6-45 received, and the former law is continued in effect for that  
6-46 purpose.

6-47 SECTION 24. Subsection (a-2), Section 156.401, and  
6-48 Subsection (c), Section 233.013, Family Code, as added by this Act,  
6-49 apply to each child support order, regardless of whether the order  
6-50 was rendered before, during, or after the effective date of this  
6-51 Act.

6-52 SECTION 25. Section 157.162, Family Code, as amended by  
6-53 this Act, applies to a motion for child support enforcement filed on  
6-54 or after the effective date of this Act. A motion filed before the  
6-55 effective date of this Act is governed by the law in effect on the  
6-56 date the motion was filed, and the former law is continued in effect  
6-57 for that purpose.

6-58 SECTION 26. Section 158.203, Family Code, as amended by  
6-59 this Act, applies to child support payments withheld by an employer  
6-60 on or after the effective date of this Act.

6-61 SECTION 27. Section 158.503, Family Code, as amended by  
6-62 this Act, applies to an administrative writ of withholding issued  
6-63 on or after the effective date of this Act.

6-64 SECTION 28. Subsection (b), Section 1108.101, Insurance  
6-65 Code, as added by this Act, applies to an assignment made on or  
6-66 after the effective date of this Act. An assignment made before the  
6-67 effective date of this Act is governed by the law in effect on the  
6-68 date the assignment was made, and the former law is continued in  
6-69 effect for that purpose.

7-1 SECTION 29. Subsection (a), Article 59.06, Code of Criminal  
7-2 Procedure, as amended by this Act, applies to a sale of forfeited  
7-3 property that occurs on or after the effective date of this Act. A  
7-4 sale that occurs before the effective date of this Act is governed  
7-5 by the law in effect on the date the property was sold, and the  
7-6 former law is continued in effect for that purpose.

7-7 SECTION 30. This Act takes effect September 1, 2011.

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